

2 **ESHB 2462** - S COMM AMD
3 By Committee on Natural Resources

4

5 Strike everything after the enacting clause and insert the
6 following:

7

"PART I

8

FLOOD PLAIN MANAGEMENT

9 NEW SECTION. **Sec. 101.** (1) The legislature finds that:

10 (a) The climate and topography of the state create conditions that
11 lead to frequent and severe flood events throughout the state;

12 (b) Nearly every county in the state has experienced at least one
13 federally declared flood disaster and that several counties have
14 experienced several federally declared flood disasters; and

15 (c) Minimum federal flood requirements are insufficient to reduce
16 flood damages and may increase them.

17 (2) It is therefore the intent of the legislature to promote the
18 wise use of public dollars by developing state flood funding criteria
19 that encourage local governments to measure, quantify, and achieve
20 numeric or narrative standards for the following outcomes:

21 (a) Reduce the risks that floods pose to human lives;

22 (b) Reduce flood damages to public and private property;

23 (c) Maintain a healthy river system; and

24 (d) Minimize long-term public costs.

25 NEW SECTION. **Sec. 102.** A new section is added to chapter 86.16
26 RCW to read as follows:

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout sections 101 through 103 of this act.

29 (1) "Base flood" or "one hundred year flood" means a flood having
30 a one percent chance of being equaled or exceeded in any given year.

31 (2) "Department" means the department of ecology.

32 (3) "Erosion hazard area" means an area where channel migration can
33 occur under existing hydrologic conditions that is specifically

1 identified in a comprehensive flood hazard management plan or a
2 federal, state, or local flood hazard map.

3 (4) "Federal emergency management agency floodway" means the
4 channel of the stream and that portion of the adjoining flood plain
5 that is necessary to contain and discharge the base flood flow without
6 increasing the base flood elevation more than one foot.

7 (5) "Flood insurance study" means the official report provided by
8 the federal insurance administration that includes flood profiles and
9 the flood insurance rate map.

10 (6) "Flood insurance rate map" means the official map on which the
11 federal insurance administration has delineated areas of flood hazard.

12 (7) "Flood plain" means any land area susceptible to being
13 inundated by water from any inland or tidal waters creating a general
14 and temporary condition of partial or complete inundation of normally
15 dry land areas.

16 (8) "Flood-prone county" means a county, and all cities and towns
17 within the county, having three or more federally declared flood
18 disasters from January 1, 1974, to January 1, 1979.

19 (9) "Substantial improvement" means any maintenance, repair,
20 structural modification, addition, or other improvement of a structure
21 that increases the footprint of a structure by fifty percent or more.

22 **Sec. 103.** RCW 86.16.041 and 1989 c 64 s 4 are each amended to read
23 as follows:

24 (1) Beginning July 26, 1987, every county and incorporated city and
25 town shall submit to the department of ecology any new flood plain
26 management ordinance or amendment to any existing flood plain
27 management ordinance. Such ordinance or amendment shall take effect
28 thirty days from filing with the department unless the department
29 disapproves such ordinance or amendment within that time period.

30 (2) The department may disapprove any ordinance or amendment
31 submitted to it under subsection (1) of this section if it finds that
32 an ordinance or amendment does not comply with any of the following:

33 (a) Restriction of land uses within designated federal emergency
34 management agency floodways including the prohibition of construction
35 or reconstruction of residential structures except for: (i) Repairs,
36 reconstruction, or improvements to a structure which do not increase
37 the ground floor area; and (ii) repairs, reconstruction, or
38 improvements to a structure the cost of which does not exceed fifty

1 percent of the market value of the structure either, (A) before the
2 repair, reconstruction, or repair is started, or (B) if the structure
3 has been damaged, and is being restored, before the damage occurred.
4 Work done (~~on structures to comply with existing health, sanitary, or~~
5 ~~safety codes or~~) to structures identified as historic places shall not
6 be included in the fifty percent determination; and

7 (b) The minimum requirements of the national flood insurance
8 program(~~;~~ ~~and~~

9 ~~(c) The minimum state requirements adopted pursuant to RCW~~
10 ~~86.16.031(8) that are applicable to the particular county, city, or~~
11 ~~town)). Within thirty days of receiving a local flood plain ordinance,
12 the department shall make a decision as to whether or not the ordinance
13 meets the criteria developed pursuant to section 104 of this act and
14 transmit the decision to the applicable city or county and to the
15 department of community, trade, and economic development. If the
16 department finds that an ordinance does not meet the criteria, it shall
17 provide a specific written statement explaining the deficiencies of the
18 ordinance.~~

19 NEW SECTION. Sec. 104. A new section is added to chapter 86.16
20 RCW to read as follows:

21 (1) Not later than six months after approval under subsection (3)
22 of this section, the department shall adopt by rule state criteria to
23 evaluate local flood plain management ordinances adopted pursuant to
24 chapter 36.70A RCW or this chapter solely for the purpose of making
25 funding decisions.

26 (2) At a minimum, the criteria shall include the following:

27 (a) The outcomes identified under RCW 86.12.200(1);

28 (b) A method for measuring these outcomes;

29 (c) A numeric or narrative standard for each outcome; and

30 (d) A timetable for achieving the standard.

31 (3)(a) A flood hazard reduction task force is created to assist the
32 department in establishing state criteria for funding and flood plain
33 ordinances. The task force shall consist of one representative of the
34 department of ecology, one representative of the department of fish and
35 wildlife, one representative of the department of community, trade, and
36 economic development, three representatives of the association of
37 Washington cities, three representatives of the Washington state
38 association of counties, one representative of the environmental

1 community, one representative of the building community, and two
2 citizens living in an affected flood plain.

3 (b) Before the department adopts criteria required under subsection
4 (1) of this section, at least ten members of the flood hazard task
5 force shall approve the criteria.

6 (c) The task force created by (a) of this subsection shall expire
7 thirty days after the department adopts the criteria approved by the
8 task force pursuant to (b) of this subsection.

9 NEW SECTION. **Sec. 105.** A new section is added to chapter 86.16
10 RCW to read as follows:

11 (1) The department may not issue a grant or loan to fund a flood
12 hazard reduction project under chapter 86.26 RCW to a city or county
13 that has not adopted a flood plain ordinance that has been accepted by
14 the department as meeting the criteria established pursuant to section
15 104(1) of this act.

16 (2) This section shall take effect June 30, 1997.

17 NEW SECTION. **Sec. 106.** A new section is added to chapter 38.52
18 RCW to read as follows:

19 (1) An applicant for state matching funds for the public assistance
20 and mitigation programs under P.L. 93-288 Secs. 404, 406, and 407, is
21 eligible only if the department of community, trade, and economic
22 development has received a statement from the department of ecology
23 verifying that the county, city, or town has adopted a flood plain
24 ordinance that meets the criteria established pursuant to section
25 104(1) of this act.

26 (2) Within a flood-prone county, an applicant for state matching
27 funds for the public assistance and mitigation programs under P.L. 93-
28 288 Secs. 404, 406, and 407, is eligible only if the county has
29 prepared, is preparing, or has formally notified the department of its
30 intention to prepare a local comprehensive flood hazard management plan
31 meeting the requirements of RCW 86.12.200. This requirement is in
32 addition to the requirement under subsection (1) of this section.

33 (3) The department shall reference or incorporate in the state
34 flood hazard mitigation plan each local ordinance that meets the
35 criteria established pursuant to section 104(1) of this act.

36 (4) Nothing in subsection (2) of this section prohibits a state
37 agency or tribal government from receiving state matching funds for the

1 public assistance and mitigation programs under P.L. 93-288 Secs. 404,
2 406, and 407.

3 (5) This section shall take effect June 30, 1997.

4 **Sec. 107.** RCW 86.12.200 and 1991 c 322 s 3 are each amended to
5 read as follows:

6 (1) Except as provided in RCW 86.26.105, the county legislative
7 authority of any county may adopt a comprehensive flood ((control))
8 hazard management plan for any drainage basin that is located wholly or
9 partially within the county. The plan elements under subsection (2) of
10 this section shall, to the maximum extent possible, achieve the
11 following goals:

- 12 (a) Reduce the risks that floods pose to human lives;
- 13 (b) Reduce flood damages to public and private property;
- 14 (c) Maintain a healthy river system; and
- 15 (d) Minimize long-term public costs.

16 (2) A comprehensive flood ((control)) hazard management plan shall
17 include the following elements:

18 ((1)) (a) Designation of areas that are susceptible to periodic
19 flooding, from inundation by bodies of water or surface water runoff,
20 or both, including the river's meander belt or floodway;

21 ((2)) (b) Establishment of a comprehensive scheme of flood
22 ((control)) hazard protection and improvements for the areas that are
23 subject to such periodic flooding, that includes: ((a))

24 (i) Determining the need for, and desirable location of, flood
25 ((control)) hazard reduction improvements to protect or preclude flood
26 damage to structures, works, and improvements, based upon a
27 ((cost/benefit)) cost-benefit ratio between the expense of providing
28 and maintaining these improvements and the benefits arising from these
29 improvements; ((b))

30 (ii) Establishing the level of flood protection that each portion
31 of the system of flood ((control)) hazard reduction improvements will
32 be permitted; ((c))

33 (iii) Identifying the positive and negative impacts of periodic
34 flooding to riparian natural resources;

35 (iv) Identifying potential impacts of in-stream flood hazard
36 reduction work on the state's in-stream resources or floodway and
37 considering alternatives to in-stream flood ((control)) hazard
38 reduction work; ((d))

1 (v) Identifying flood storage areas where flood waters could be
2 directed during a flood to avoid damage to buildings and other
3 structures; ((and-(e)))

4 (vi) Identifying areas where a river may migrate into a new
5 channel;

6 (vii) Identifying practices that will avoid long-term accretion of
7 sediments; and

8 (viii) Identifying sources of revenue that will be sufficient to
9 finance the comprehensive scheme of flood ((control)) hazard management
10 protection and improvements, including but not limited to compensating
11 owners of land designated as a flood storage area;

12 ((3) Establishing)) (c) Establishment of land use regulations,
13 within a river's floodway that ((preclude the location of structures,
14 works, or improvements in critical portions of such areas subject to
15 periodic flooding, including a river's meander belt or floodway, and
16 permitting only flood-compatible land uses in such areas;

17 (4) Establishing restrictions on)): (i) Allow only flood-
18 compatible land-uses. These uses may include, but shall not be limited
19 to agriculture, recreation, and transportation; (ii) restrict
20 construction activities ((in areas subject to periodic floods that
21 require the flood proofing of those structures that are permitted to be
22 constructed or remodeled; and

23 (5) Establishing)); and (iii) establish restrictions on land
24 clearing activities and development practices that exacerbate flood
25 problems by increasing the flow or accumulation of flood waters, or the
26 intensity of drainage, on low-lying areas. Land clearing activities do
27 not include forest practices as defined in chapter 76.09 RCW.

28 (3) Each comprehensive flood hazard management plan prepared by a
29 city, town, or special district shall be consistent with the county
30 flood hazard management plan. Each plan prepared by a county shall
31 include criteria to judge consistency. At a minimum, the criteria
32 shall be based on the ability of the plan to:

33 (a) Protect existing flood storage and conveyance;

34 (b) Control storm water runoff; and

35 (c) Meet the goals of subsection (1) of this section.

36 (4) Inconsistencies between a county flood hazard management plan
37 and a city, town, or special district comprehensive flood hazard
38 management plan shall be resolved by a growth planning hearings board.

1 (5) A comprehensive flood (~~control~~) hazard management plan shall
2 be subject to the minimum requirements for participation in the
3 national flood insurance program(~~(7)~~) and any flood plain requirements
4 exceeding the minimum national flood insurance program (~~that have been~~
5 ~~adopted by the department of ecology for a specific flood plain~~
6 ~~pursuant to RCW 86.16.031, and rules adopted by the department of~~
7 ~~ecology pursuant to RCW 86.26.050 relating to flood plain management~~
8 ~~activities~~)).

9 (6) When a county plans under chapter 36.70A RCW, it (~~may~~) shall
10 incorporate the portion of its comprehensive flood control management
11 plan relating to land use restrictions in its comprehensive plan and
12 development regulations adopted pursuant to chapter 36.70A RCW.

13 NEW SECTION. Sec. 108. A new section is added to chapter 86.12
14 RCW to read as follows:

15 (1) Each county comprehensive flood hazard management plan shall be
16 consistent with any other county flood hazard management plan prepared
17 for the same watershed.

18 (2) Inconsistencies between a county comprehensive flood management
19 plan and another county comprehensive flood management plan prepared
20 for the same watershed shall be resolved by a growth planning hearings
21 board upon petition of the department of ecology, a local government
22 within the watershed, or twenty-five or more citizens in the area of
23 the watershed.

24 Sec. 109. RCW 36.70A.280 and 1991 sp.s. c 32 s 9 are each amended
25 to read as follows:

26 (1) A growth planning hearings board shall hear and determine only
27 those petitions alleging (~~either~~): (a) That a state agency, county,
28 or city is not in compliance with the requirements of this chapter, or
29 chapter 43.21C RCW as it relates to plans, regulations, and amendments
30 thereto, adopted under RCW 36.70A.040; (~~or~~) (b) that the twenty-year
31 growth management planning population projections adopted by the office
32 of financial management pursuant to RCW 43.62.035 should be adjusted;
33 or (c) that comprehensive flood hazard reduction plans prepared for the
34 same watershed are inconsistent.

35 (2) A petition may be filed only by the state, a county or city
36 that plans under this chapter, a person who has either appeared before
37 the county or city regarding the matter on which a review is being

1 requested or is certified by the governor within sixty days of filing
2 the request with the board, or a person qualified pursuant to RCW
3 34.05.530.

4 (3) For purposes of this section "person" means any individual,
5 partnership, corporation, association, governmental subdivision or unit
6 thereof, or public or private organization or entity of any character.

7 (4) When considering a possible adjustment to a growth management
8 planning population projection prepared by the office of financial
9 management, a board shall consider the implications of any such
10 adjustment to the population forecast for the entire state.

11 The rationale for any adjustment that is adopted by a board must be
12 documented and filed with the office of financial management within ten
13 working days after adoption.

14 If adjusted by a board, a county growth management planning
15 population projection shall only be used for the planning purposes set
16 forth in this chapter and shall be known as a "board adjusted
17 population projection". None of these changes shall affect the
18 official state and county population forecasts prepared by the office
19 of financial management, which shall continue to be used for state
20 budget and planning purposes.

21 **Sec. 110.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to
22 read as follows:

23 (1) The hearings board shall only have jurisdiction to hear and
24 decide appeals from the following decisions of the department, the
25 director, the administrator of the office of marine safety, and the air
26 pollution control boards or authorities as established pursuant to
27 chapter 70.94 RCW, or local health departments:

28 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
29 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
30 90.56.330(~~(-)~~);

31 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
32 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
33 90.14.130, and 90.48.120(~~(-)~~);

34 (c) The issuance, modification, or termination of any permit,
35 certificate, or license by the department or any air authority in the
36 exercise of its jurisdiction, including the issuance or termination of
37 a waste disposal permit, the denial of an application for a waste

1 disposal permit, or the modification of the conditions or the terms of
2 a waste disposal permit((-))i

3 (d) Decisions of local health departments regarding the grant or
4 denial of solid waste permits pursuant to chapter 70.95 RCW((-))i

5 (e) Decisions of local health departments regarding the issuance
6 and enforcement of permits to use or dispose of biosolids under RCW
7 70.95J.080((-))i

8 (f) Decisions of the department regarding the grant or denial of
9 local flood plain ordinances pursuant to chapter 86.16 RCW or
10 comprehensive flood hazard management plans pursuant to chapter 86.26
11 RCW; and

12 (g) Any other decision by the department, the administrator of the
13 office of marine safety, or an air authority which pursuant to law must
14 be decided as an adjudicative proceeding under chapter 34.05 RCW.

15 (2) The following hearings shall not be conducted by the hearings
16 board:

17 (a) Hearings required by law to be conducted by the shorelines
18 hearings board pursuant to chapter 90.58 RCW((-))i

19 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
20 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
21 90.44.180((-))i

22 (c) Proceedings by the department relating to general adjudications
23 of water rights pursuant to chapter 90.03 or 90.44 RCW((-))i and

24 (d) Hearings conducted by the department to adopt, modify, or
25 repeal rules.

26 (3) Review of rules and regulations adopted by the hearings board
27 shall be subject to review in accordance with the provisions of the
28 Administrative Procedure Act, chapter 34.05 RCW.

29 **Sec. 111.** RCW 86.16.020 and 1989 c 64 s 1 are each amended to read
30 as follows:

31 State-wide flood plain management regulation shall be exercised
32 through: (1) Local governments' administration of the national flood
33 insurance program regulation requirements, (2) the establishment of
34 minimum state requirements for flood plain management that (~~equal~~)
35 include the minimum federal requirements for the national flood
36 insurance program, and (3) the issuance of regulatory orders. State-
37 wide flood plain management regulations shall not include requirements
38 to establish a zero-rise floodway. This regulation shall be exercised

1 over the planning, construction, operation and maintenance of any
2 works, structures and improvements, private or public, which might, if
3 improperly planned, constructed, operated and maintained, adversely
4 influence the regimen of a stream or body of water or might adversely
5 affect the security of life, health and property against damage by
6 flood water.

7 **Sec. 112.** RCW 86.16.045 and 1989 c 64 s 6 are each amended to read
8 as follows:

9 A county, city, or town may adopt flood plain management ordinances
10 or requirements that exceed state requirements or the minimum federal
11 requirements of the national flood insurance program ((without
12 following the procedures provided in RCW 86.16.031(8)))).

13 **Sec. 113.** RCW 86.26.010 and 1984 c 212 s 2 are each amended to
14 read as follows:

15 The department of ecology shall have charge for the state of the
16 administration and enforcement of all laws relating to flood
17 ((control)) hazard management and shall adopt rules as necessary to
18 implement the provisions of this chapter.

19 **Sec. 114.** RCW 86.26.105 and 1986 c 46 s 5 are each amended to read
20 as follows:

21 ((A comprehensive flood control management plan shall determine the
22 need for flood control work, consider alternatives to in-stream flood
23 control work, identify and consider potential impacts of in-stream
24 flood control work on the state's in-stream resources, and identify the
25 river's meander belt or floodway.)) (1) By June 30, 1995, the
26 department shall prepare a six-year plan to schedule financial
27 assistance to flood-prone counties preparing a comprehensive flood
28 hazard reduction plan. The six-year plan shall include formal
29 agreements between the department and each flood-prone county intending
30 to prepare a comprehensive flood hazard reduction plan. The six-year
31 plan shall specify the timing and funding of a comprehensive flood
32 hazard management plan. A comprehensive flood ((control)) hazard
33 management plan shall be completed and adopted within at least three
34 years of the certification that it is being prepared, as provided in
35 RCW 86.26.050.

1 ((If after this three year period has elapsed such a comprehensive
2 flood control plan has not been completed and adopted, grants for flood
3 control maintenance projects shall not be made to the county or
4 municipal corporations in the county until a comprehensive flood
5 control plan is completed and adopted by the appropriate local
6 authority.)) Each flood-prone county shall, and each city within a
7 flood-prone county may, notify the department, in writing, of its
8 intentions to prepare a comprehensive flood hazard management plan by
9 January 1, 1995.

10 (2) The department may not issue a grant or loan to fund a flood
11 hazard reduction project under this chapter to a city or county that is
12 in violation of subsection (1) of this section. These limitations on
13 grants shall not preclude allocations for emergency purposes made
14 pursuant to RCW 86.26.060.

15 NEW SECTION. Sec. 115. A new section is added to chapter 43.300
16 RCW to read as follows:

17 The department shall give priority to, and shall expedite the
18 processing of, hydraulics permits authorizing projects that a county
19 identifies as being critical to implementing an approved comprehensive
20 flood hazard management plan developed by the county under RCW
21 86.12.200.

22 NEW SECTION. Sec. 116. A new section is added to chapter 90.58
23 RCW to read as follows:

24 The department shall give priority to, and shall expedite the
25 processing of, substantial development permits authorizing projects
26 that a county identifies as being critical to implementing an approved
27 comprehensive flood hazard management plan developed by the county
28 under RCW 86.12.200.

29 **Sec. 117.** RCW 79.90.150 and 1991 c 337 s 1 are each amended to
30 read as follows:

31 When gravel, rock, sand, silt or other material from any aquatic
32 lands is removed by any public agency or under public contract for
33 channel or harbor improvement, or flood control, use of such material
34 may be authorized by the department of natural resources for a public
35 purpose on land owned or leased by the state or any municipality,
36 county, or public corporation: PROVIDED, That when no public land site

1 is available for deposit of such material, its deposit on private land
2 with the landowner's permission is authorized and may be designated by
3 the department of natural resources to be for a public purpose. Prior
4 to removal and use, the state agency, municipality, county, or public
5 corporation contemplating or arranging such use shall first obtain
6 written permission from the department of natural resources. No
7 payment of royalty shall be required for such gravel, rock, sand, silt,
8 or other material used for such public purpose, but a charge will be
9 made if such material is subsequently sold or used for some other
10 purpose: PROVIDED, That the department may authorize such public
11 agency or private landowner to dispose of such material without charge
12 when necessary to implement disposal of material. No charge shall be
13 required for any use of the material obtained under the provisions of
14 this chapter when used solely on an authorized site. No charge shall
15 be required for any use of the material obtained under the provisions
16 of this chapter if the material is used for public purposes by local
17 governments. No charge may be required for removal or use of such
18 material if the removal of the material is determined by the local
19 government to be for flood control purposes. Public purposes include,
20 but are not limited to, construction and maintenance of roads, dikes,
21 and levies. Nothing in this section shall repeal or modify the
22 provisions of RCW 75.20.100 or eliminate the necessity of obtaining a
23 permit for such removal from other state or federal agencies as
24 otherwise required by law.

25 **Sec. 118.** RCW 79.90.300 and 1991 c 322 s 26 are each amended to
26 read as follows:

27 (1) The department of natural resources, upon application by any
28 person or when determined by the department to be in the best interest
29 of the state, may enter into a contract or lease providing for the
30 removal and sale of rock, gravel, sand, and silt, or other valuable
31 materials located within or upon beds of navigable waters, or upon any
32 tidelands or shorelands belonging to the state and providing for
33 payment to be made therefor by such royalty as the department may fix,
34 by negotiation, by sealed bid, or at public auction. If application is
35 made for the purchase of any valuable material situated within or upon
36 aquatic lands the department shall inspect and appraise the value of
37 the material in the application. The department may reduce or
38 eliminate royalties in areas prone to flooding. Removal of material

1 from within the ordinary high water mark shall be construed as being
2 removed for flood control purposes. The department may include a
3 provision in contracts for the removal of rock, gravel, sand, or silt
4 that allows for payment to be made as the material is sold.

5 (2) The department shall actively seek to encourage through permit
6 requirements and adjusted fees the removal of accumulated materials
7 from rivers and streams where there is a flood damage reduction
8 benefit. The department shall develop policies to accomplish this
9 goal.

10 NEW SECTION. Sec. 119. RCW 79.90.325 and 1984 c 212 s 10 are each
11 repealed.

12 **PART II**

13 **FUNDING**

14 **Sec. 201.** RCW 86.26.050 and 1991 c 322 s 6 are each amended to
15 read as follows:

16 (1) State participation shall be in such preparation of
17 comprehensive flood ~~((control))~~ hazard management plans under this
18 chapter and chapter 86.12 RCW, cost sharing feasibility studies for new
19 flood ~~((control))~~ hazard reduction projects, ~~((projects pursuant to~~
20 ~~section 33, chapter 322, Laws of 1991,))~~ and flood ~~((control~~
21 ~~maintenance))~~ hazard reduction projects as are affected with a general
22 public and state interest, as differentiated from a private interest,
23 and as are likely to bring about public benefits commensurate with the
24 amount of state funds allocated thereto.

25 (2) The department of ecology shall adopt rules concerning the
26 flood plain management activities of a county, city, or town that are
27 adequate to protect or preclude flood damage to structures, works, and
28 improvements, including the restriction of land uses within a river's
29 meander belt or floodway to only flood-compatible uses.

30 (3) No participation for flood ~~((control maintenance))~~ hazard
31 reduction projects may occur with a county or other municipal
32 corporation unless the director of ecology has approved the flood plain
33 management ~~((activities))~~ ordinances of the county, city, or town
34 having planning jurisdiction over the area where the flood ~~((control~~
35 ~~maintenance))~~ hazard reduction project will be, on the one hundred year
36 flood plain surrounding such area.

1 (~~The department of ecology shall adopt rules concerning the flood~~
2 ~~plain management activities of a county, city, or town that are~~
3 ~~adequate to protect or preclude flood damage to structures, works, and~~
4 ~~improvements, including the restriction of land uses within a river's~~
5 ~~meander belt or floodway to only flood compatible uses. Whenever the~~
6 ~~department has approved county, city, and town flood plain management~~
7 ~~activities, as a condition of receiving an allocation of funds under~~
8 ~~this chapter, each revision to the flood plain management activities~~
9 ~~must be approved by the department of ecology, in consultation with the~~
10 ~~department of fisheries and the department of wildlife.))~~

11 (4) No participation with a county or other municipal corporation
12 for flood (~~control maintenance~~) hazard reduction projects may occur
13 unless the county engineer of the county within which the flood
14 (~~control maintenance~~) hazard reduction project is located certifies
15 that a comprehensive flood (~~control~~) hazard management plan has been
16 completed and adopted by the appropriate local authority, or is being
17 prepared for all portions of the river basin or other area, within
18 which the project is located in that county, that are subject to
19 flooding with a frequency of one hundred years or less.

20 (~~(3)~~) (5) Participation for flood (~~control maintenance~~) hazard
21 reduction projects and preparation of comprehensive flood (~~control~~)
22 hazard management plans shall be made from grants made by the
23 department of ecology from the flood (~~control~~) hazard reduction
24 assistance account. In making allocation decisions on planning grants,
25 the department shall give first priority to counties that have been
26 designated as flood prone. The comprehensive flood (~~control~~) hazard
27 management plans, and any revisions to the plans, must be approved by
28 the department of ecology, in consultation with affected Indian tribes,
29 the department of transportation, and the department of (~~fisheries and~~
30 the department of) fish and wildlife as a condition of receiving funds
31 for hazard reduction projects under this chapter. (~~The department may~~
32 only grant financial assistance to local governments that, in the
33 opinion of the department, are making good faith efforts to take
34 advantage of, or comply with, federal and state flood control
35 programs.))

36 (6) For purposes of this section, "flood hazard reduction project"
37 means any structural or nonstructural project.

1 NEW SECTION. **Sec. 202.** A new section is added to chapter 86.26
2 RCW to read as follows:

3 (1) In awarding grants under this chapter, the department of
4 ecology shall give strong preference to local governments that have:
5 (a) Implemented, or are in the process of implementing, an ordinance
6 that establishes a flood plain policy that is substantially more
7 stringent than minimum federal requirements; (b) completed, or are in
8 the process of completing, a comprehensive flood hazard management plan
9 meeting the requirements of RCW 86.12.200; or (c) have incorporated
10 public access into their flood hazard reduction projects.

11 (2) This section shall expire June 30, 1997, if rules are adopted
12 under section 104 of this act.

13 **Sec. 203.** RCW 86.15.030 and 1969 ex.s. c 195 s 2 are each amended
14 to read as follows:

15 Upon receipt of a petition asking that a zone be created, or upon
16 motion of the board, the board shall adopt a resolution which shall
17 describe the boundaries of such proposed zone; describe in general
18 terms the flood control needs or requirements within the zone; set a
19 date for public hearing upon the creation of such zone, which shall be
20 not more than thirty days after the adoption of such resolution.
21 Notice of such hearing and publication shall be had in the manner
22 provided in RCW 36.32.120(7).

23 At the hearing scheduled upon the resolution, the board shall
24 permit all interested parties to be heard. Thereafter, the board may
25 reject the resolution or it may modify the boundaries of such zone and
26 make such other corrections or additions to the resolutions as they
27 deem necessary to the accomplishment of the purpose of this chapter:
28 PROVIDED, That if the boundaries of such zone are enlarged, the board
29 shall hold an additional hearing following publication and notice of
30 such new boundaries: PROVIDED FURTHER, That the boundaries of any zone
31 shall generally follow the boundaries of the watershed area affected:
32 PROVIDED FURTHER, That the immediately preceding proviso shall in no
33 way limit or be construed to prohibit the formation of a county-wide
34 flood control zone district authorized to be created by RCW 86.15.025.

35 Within (~~ten~~) thirty days after final hearing on a resolution, the
36 board shall issue its (~~order~~) ordinance creating the flood control
37 zone district.

1 **Sec. 204.** RCW 86.15.050 and 1961 c 153 s 5 are each amended to
2 read as follows:

3 The board (~~((of county commissioners of each county))~~) shall be ex
4 officio, by virtue of their office, supervisors of the zones created in
5 each county. The supervisors of the district shall conduct the
6 business of the flood control zone district according to the regular
7 rules and procedures that it adopts.

8 **Sec. 205.** RCW 86.15.160 and 1986 c 278 s 60 are each amended to
9 read as follows:

10 For the purposes of this chapter the supervisors may authorize:

11 (1) An annual excess ad valorem tax levy within any zone or
12 participating zones when authorized by the voters of the zone or
13 participating zones under RCW 84.52.052 and 84.52.054;

14 (2) An assessment upon property, including state property,
15 specially benefited by flood control improvements or storm water
16 control improvements imposed under chapter 86.09 RCW;

17 (3) Within any zone or participating zones an annual ad valorem
18 property tax levy of not to exceed fifty cents per thousand dollars of
19 assessed value when the levy will not take dollar rates that other
20 taxing districts may lawfully claim and that will not cause the
21 combined levies to exceed the constitutional and/or statutory
22 limitations, and the additional levy, or any portion thereof, may also
23 be made when dollar rates of other taxing units is released therefor by
24 agreement with the other taxing units from their authorized levies
25 under chapter 39.67 RCW;

26 (4) A charge, under RCW 36.89.080 through 36.89.100, for the
27 furnishing of service to those who are receiving or will receive
28 benefits from storm water control facilities and who are contributing
29 to an increase in surface water runoff. Except as otherwise provided
30 in RCW 90.03.525, any public entity and public property, including the
31 state and state property, shall be liable for the charges to the same
32 extent a private person and privately owned property is liable for the
33 charges, and in setting these rates and charges, consideration may be
34 made of in-kind services, such as stream improvements or donation of
35 property;

36 (5) The creation of local improvement districts and utility local
37 improvement districts, the issuance of improvement district bonds and
38 warrants, and the imposition, collection, and enforcement of special

1 assessments on all property, including any state-owned or other
2 publicly-owned property, specially benefited from improvements in the
3 same manner as provided for counties by chapter 36.94 RCW.

4 **PART III**

5 **FLOOD HAZARD INFORMATION**

6 **Sec. 301.** RCW 58.19.055 and 1992 c 191 s 5 are each amended to
7 read as follows:

8 (1) A public offering statement shall contain the following
9 information:

10 (a) The name, and the address or approximate location, of the
11 development;

12 (b) The name and address of the developer;

13 (c) The name and address of the management company, if any, for the
14 development;

15 (d) The relationship of the management company to the developer, if
16 any;

17 (e) The nature of the interest being offered for sale;

18 (f) A brief description of the permitted uses and use restrictions
19 pertaining to the development and the purchaser's interest therein;

20 (g) The number of existing lots, parcels, units, or interests in
21 the development and either the maximum number that may be added to the
22 development or the fact that such maximum number has not yet been
23 determined;

24 (h) A list of the principal common amenities in the development
25 which materially affect the value of the development and those that
26 will or may be added to the development;

27 (i) The identification of any real property not in the development,
28 the owner of which has access to any of the development, and a
29 description of the terms of such access;

30 (j) The identification of any real property not in the development
31 to which owners in the development have access and a description of the
32 terms of such access;

33 (k) The status of construction of improvements in the development,
34 including either the estimated dates of completion if not completed or
35 the fact that such estimated completion dates have not yet been
36 determined; and the estimated costs, if any, to be paid by the
37 purchaser;

1 (l) The estimated current owners' association expense, if any, for
2 which a purchaser would be liable;

3 (m) An estimate of any payment with respect to any owners'
4 association expense for which the purchaser would be liable at closing;

5 (n) The estimated current amount and purpose of any fees not
6 included in any owners' association assessments and charged by the
7 developer or any owners' association for the use of any of the
8 development or improvements thereto;

9 (o) Any assessments which have been agreed to or are known to the
10 developer and which, if not paid, may constitute a lien against any
11 portion of the development in favor of any governmental agency;

12 (p) The identification of any parts of the development which any
13 purchaser will have the responsibility for maintaining;

14 (q) A brief description of any blanket encumbrance which is subject
15 to the provisions of RCW 58.19.180;

16 (r) A list of any physical hazards known to the developer which
17 particularly affect the development or the immediate vicinity in which
18 the development is located and which are not readily ascertainable by
19 the purchaser;

20 (s) A brief description of any construction warranties to be
21 provided to the purchaser;

22 (t) Any building code violation citations received by the developer
23 in connection with the development which have not been corrected;

24 (u) A statement of any unsatisfied judgments or pending suits
25 against any owners' association involved in the development and a
26 statement of the status of any pending suits material to the
27 development of which the developer has actual knowledge;

28 (v) A notice which describes a purchaser's right to cancel the
29 purchase agreement or extend the closing under RCW 58.19.045(3),
30 including applicable time frames and procedures;

31 (w) A list of the documents which the prospective purchaser is
32 entitled to receive from the developer before the rescission period
33 commences;

34 (x) A notice which states:

35 "A purchaser may not rely on any representation or express warranty
36 unless it is contained in the public offering statement or made in
37 writing signed by the developer or by any person identified in the
38 public offering statement as the declarant's agent";

1 (y) A notice which states:

2 "This public offering statement is only a summary of some of the
3 significant aspects of purchasing an interest in this development and
4 any documents which may govern or affect the development may be
5 complex, may contain other important information, and create binding
6 legal obligations. You should consider seeking assistance of legal
7 counsel"; and

8 (z) Any other information and cross-references which the developer
9 believes will be helpful in describing the development to the
10 recipients of the public offering statement, all of which may be
11 included or not included at the option of the developer.

12 (2) The public offering statement shall include copies of each of
13 the following documents: Any declaration of covenants, conditions,
14 restrictions, and reservations affecting the development; any survey,
15 plat, or subdivision map; the articles of incorporation of any owners'
16 association; the bylaws of any owners' association; the rules and
17 regulations, if any, of any owners' association; current or proposed
18 budget for any owners' association; and the balance sheet of any
19 owners' association current within ninety days if assessments have been
20 collected for ninety days or more.

21 If any of the foregoing documents listed in this subsection are not
22 available because they have not yet been executed, adopted, or
23 recorded, drafts of such documents shall be provided with the public
24 offering statement, and, before closing the sale of an interest in the
25 development, the purchaser shall be given copies of any material
26 changes between the draft of the proposed documents and the final
27 documents.

28 (3) The disclosures required by subsection (1)(v), (x), and (y) of
29 this section shall be located at the top of the first page of the
30 public offering statement and be typed or printed in ten-point bold
31 face type size.

32 (4) The disclosures required by subsection (1)(r) of this section
33 shall be listed on a separate page from the other disclosures required
34 by this section and shall be printed or typed in ten-point type. If
35 the development or any portion of the development described in the
36 public offering statement is located within an erosion hazard area or
37 the one hundred year flood plain as shown on flood insurance rate maps
38 provided by the federal emergency management agency for the national

1 flood insurance program, this shall be listed as a physical hazard
2 under subsection (1)(r) of this section.

3 NEW SECTION. **Sec. 302.** A new section is added to chapter 64.04
4 RCW to read as follows:

5 The seller of real property located in an erosion hazard area or
6 the area mapped in the one hundred year flood plain, as shown on the
7 most recent flood insurance rate maps provided by the federal emergency
8 management agency for the national flood insurance program, shall
9 inform the buyer that the property is located in an erosion hazard area
10 or the one hundred year flood plain and may be subject to land use
11 restrictions. The seller shall inform the buyer in the first written
12 document constituting an agreement of sale. Proof of notification
13 prior to closing is the responsibility of the seller.

14 As used in this section, "erosion hazard area" has the meaning in
15 section 102 of this act.

16 This section shall take effect January 2, 1995, unless a version of
17 Senate Bill No. 6283 relating to real estate disclosures takes effect
18 by January 1, 1995, and contains specific language requiring
19 disclosures for property in the one hundred year flood plain and
20 erosion hazard areas. If a version of Senate Bill No. 6283 containing
21 these specific disclosure provisions takes effect by January 1, 1995,
22 this section is null and void.

23 NEW SECTION. **Sec. 303.** A new section is added to chapter 64.04
24 RCW to read as follows:

25 The location of real property within an erosion hazard area or the
26 area mapped as the one hundred year flood plain, as shown on flood
27 insurance rate maps provided by the federal emergency management agency
28 for the national flood insurance program, is declared to be a hidden
29 defect in the real property that shall be disclosed by the seller of
30 the real property or an ownership interest in the real property.

31 As used in this section, "erosion hazard area" has the meaning in
32 section 102 of this act.

33 This section shall take effect January 2, 1995, unless a version of
34 Senate Bill No. 6283 relating to real estate disclosures takes effect
35 by January 1, 1995, and contains specific language requiring
36 disclosures for property in the one hundred year flood plain and
37 erosion hazard areas. If a version of Senate Bill No. 6283 containing

1 these specific disclosure provisions takes effect by January 1, 1995,
2 this section is null and void.

3 **Sec. 304.** RCW 86.16.031 and 1989 c 64 s 3 are each amended to read
4 as follows:

5 The department of ecology shall:

6 (1) Review and approve county, city, or town flood plain management
7 ordinances pursuant to RCW 86.16.041;

8 (2) When requested, provide guidance and assistance to local
9 governments in development and amendment of their flood plain
10 management ordinances;

11 (3) Provide technical assistance to local governments in the
12 administration of their flood plain management ordinances;

13 (4) Provide local governments and the general public with
14 information related to the national flood insurance program;

15 (5) When requested, provide assistance to local governments in
16 enforcement actions against any individual or individuals performing
17 activities within the flood plain that are not in compliance with
18 local, state, or federal flood plain management requirements;

19 (6) Establish state minimum requirements that ~~((equal minimum))~~
20 include federal requirements for the national flood insurance program;

21 (7) Assist counties, cities, and towns in identifying the location
22 of the one hundred year flood plain, and petitioning the federal
23 government to alter its designations of where the one hundred year
24 flood plain is located if the federally recognized location of the one
25 hundred year flood plain is found to be inaccurate; and

26 ~~((Establish minimum state requirements for specific flood
27 plains that exceed the minimum federal requirements for the national
28 flood insurance program, but only if:~~

29 ~~(a) The location of the one hundred year flood plain has been
30 reexamined and is certified by the department as being accurate;~~

31 ~~(b) negotiations have been held with the affected county, city, or
32 town over these regulations;~~

33 ~~(c) public input from the affected community has been obtained; and~~

34 ~~(d) the department makes a finding that these increased
35 requirements are necessary due to local circumstances and general
36 public safety)) File copies of the flood insurance rate maps, provided
37 by the federal emergency management agency for the national flood
38 insurance program, with the county auditor in each county in which~~

1 property shown on the maps is located. The department shall, on an
2 annual basis, file revised maps with each county auditor in counties
3 for which the maps are revised.

4 **PART IV**
5 **MISCELLANEOUS**

6 NEW SECTION. **Sec. 401.** Part headings as used in this act
7 constitute no part of the law.

8 NEW SECTION. **Sec. 402.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected."

12 **ESHB 2462** - S COMM AMD
13 By Committee on Natural Resources

14
15 On page 1, line 1 of the title, after "reduction;" strike the
16 remainder of the title and insert "amending RCW 86.16.041, 86.12.200,
17 36.70A.280, 43.21B.110, 86.16.020, 86.16.045, 86.26.010, 86.26.105,
18 79.90.150, 79.90.300, 86.26.050, 86.15.030, 86.15.050, 86.15.160,
19 58.19.055, and 86.16.031; adding new sections to chapter 86.16 RCW;
20 adding a new section to chapter 38.52 RCW; adding a new section to
21 chapter 86.12 RCW; adding a new section to chapter 43.300 RCW; adding
22 a new section to chapter 90.58 RCW; adding a new section to chapter
23 86.26 RCW; adding new sections to chapter 64.04 RCW; creating new
24 sections; repealing RCW 79.90.325; and providing contingent effective
25 dates."

--- END ---